

**FILED****MAR 30 2011**  
CLERKUNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

\*\*\*\*\*

GARY HOUSEWEART,

CIV. 09-4168

Plaintiff,

vs.

OPINION AND ORDER

MICHAEL J. ASTRUE, Commissioner,  
Social Security Administration,

Defendant.

\*\*\*\*\*

This Court referred this case to United States Magistrate Judge John E. Simko for the purpose of issuing a Report and Recommendation. The Magistrate Judge has recommended that Plaintiff's Motion for Summary Judgment (Doc. 9) be GRANTED, and that the Commissioner's denial of benefits be reversed and remanded for reconsideration and further administrative proceedings pursuant to sentence four of 42 U.S.C. § 405(g). Neither party filed objections to the Report and Recommendation.

The Court has carefully conducted a *de novo* review of the Magistrate Judge's Report and Recommendation, the Defendant's objections, and the record of the administrative proceedings. After having reviewed the record, the Court agrees with the Magistrate Judge's Report and Recommendation.

A sentence four remand is proper when the district court makes a substantive ruling regarding the correctness of the Commissioner's decision and remands the case in accordance with such ruling. *Buckner v. Apfel*, 213 F.3d 1006, 1010 (8<sup>th</sup> Cir. 2000). Remand with instructions to award benefits is appropriate "only if the record overwhelmingly supports such a finding." *Buckner* at 1011. In the

face of a finding of an improper denial of benefits, but the absence of overwhelming evidence to support a disability finding by the Court, out of deference to the ALJ the proper course is to remand for further administrative findings. *Id.*, *Cox v. Apfel*, 160 F.3d 1203, 1210 (8<sup>th</sup> Cir. 1998).

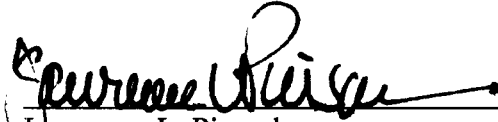
Accordingly, it is hereby

ORDERED that:

1. The Magistrate Judge's Report and Recommendation (Doc. 14) is ADOPTED by the Court.
2. Plaintiff's Motion for Summary Judgment (Doc. 9) is GRANTED.
3. The Commissioner's decision is REVERSED under sentence four of 42 U.S.C. § 405(g) and the case is REMANDED to the Commissioner for further administrative proceedings as described in detail in the Report and Recommendation.

Dated this 30<sup>th</sup> day of March, 2011.

BY THE COURT:

  
Lawrence L. Piersol  
United States District Judge

ATTEST:  
JOSEPH HAAS, CLERK

BY:   
DEPUTY